

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Dalip Singh & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1318/2006
against the order dated 21-9-2006 passed
by the Additional Sessions Judge, Rajgarh,
district Churu, in Cri. Revision No.1/2006.

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Date of Order: October 10, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sanjay Mathur, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 21-9-2006 passed by the Additional Sessions Judge, Rajgarh, district Churu (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the petitioners against the order dated 9-12-2005 passed by the Additional Chief Judicial Magistrate, Rajgarh, district Churu (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties.
Carefully gone through the order impugned.

The petitioners are facing trial before the trial Court for the offences under Sections 147, 148, 149, 323, 324, 325, 326, 307, 336 IPC. During pendency of the case, the complainant and the Assistant Public Prosecutor moved the trial Court by way of filing application under Section 311 of the Code seeking to recall Dr. Megh Singh, who medically examined injured Smt. Chandra Kanwar and prepared the injury report, as also witness Vimal Kumar Jain. The trial Court, on consideration of the material placed before it and keeping in view the fact that recalling of witness Vimal Kumar Jain is essential for just decision of the case, partly allowed the application under Section 311 of the Code, however, dismissed the application for recalling witness Dr. Megh Singh.

The order recalling the witness Vimal Kumar Jain was challenged by the petitioners before the Revisional Court. The Revisional Court did not find any error in the order of the trial Court and dismissed the revision petition by the impugned order.

Keeping in view the decisions of the Hon'ble Court in Mohan Lal Shamji Soni Vs. Union of India & Anr., AIR 1991 (Supp. (1) 271; Rajendra Prasad Vs. Narcotic Cell through its Officer-in-charge, Delhi, AIR 1999 SC 2292; and a decision of this Court in Mahipal Vs. State of Rajasthan, 2001 (2) R.Cr.D. 411 (Raj.), it is clear that Section 311 of the Code allows the Court to invoke its powers at any stage, so long as the Court

retains seisin of the criminal proceedings without qualifying any limitation or prohibition. Needless to say that the trial of any Court reaches to its finality when the order or judgment is pronounced and until then the Court has power to invoke the provisions of Section 311 of the Code.

On careful perusal of the orders passed by the Courts below, in my view, the trial Court was justified in recalling witness Vimal Kumar Jain and this order cannot be said to be erroneous or illegal, warranting interference under the inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

mcs